

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 882 of 2000(B)

O.P(MV).NO.1605/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY.

APPELLANTS/ PETITIONERS:

1. PUTHANPEEDIKAYIL NAFEESA,
D/O. MOIDU, 40 YEARS, PUTHANPEEDIKAYIL HOUSE,
MATHODAM, KANNADIPARAMBA.
2. NUSRATH, 16 YEARS (MINOR).
3. NASEER, 14 YEARS (MINOR).
4. SHAMSUDDIN, 9 YEARS (MINOR),

(APPLICANTS 2 TO 4 BEING MINORS
REPRESENTED BY THEIR MOTHER
NAFEESA, 1ST PETITIONER).

BY ADV. SRI.A.MOHAMED MUSTAQUE.

RESPONDENTS/ RESPONDENTS:

1. CHERIYAKUNHIKANDI ABOOBACKER,
S/O. IBRAHIM, 27 YEARS,
NALAMPEEDIKA, KOLACHERI-670 601.
2. ABDUL KAREEM, AZHEEKODAN HOUSE,
BAKALA.P.O., KANOOL.
3. UNITED INDIA ASSURANCE CO., LTD.,
PAYYANNUR.

M.F.A. NO. 882/2000:

4. P.C. ABDUL RAZZAK, P.C. HOUSE,
ELAYAVOOR AMSOM, KANNUR.
5. ORIENTAL INSURANCE CO. LTD.,
KANNUR.
- SUPPL.6. C. MUHAMMED, S/O. AHAMMED,
CHELATHADATHIL HOUSE,
MULLANPARA, MANCHERI.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA),
SRI.P.R.RAMACHANDRA MENON,
SRI.P.K.MOHAMED JAMEEL,
SRI.GRASHIOUS KURIAKOSE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A. No. 882 of 2000

Dated this the 8th day of October, 2007

Judgment

Koshy,J.

A 20 year old youngster suffered fatal injuries in an accident on 27.4.1995 when the taxi car driven by him collided with a lorry bearing registration No. KL 1/4714 driven by the first respondent, owned by the second respondent and insured by the third respondent insurance company. The injured was taken to Government Hospital, Kannur. From there, he was referred to the Medical College Hospital, Kozhikode. He died on the same day. His mother aged 40 years and three brothers aged between 9 to 16 years filed application for compensation alleging negligence on the first respondent driver of the lorry. Father of the deceased, one of the legal representative was impleaded as sixth respondent. According to the claimants, he was living separately and deceased was looking after his mother and minor brothers. Owner of the car and its insurance company were impleaded as fourth and fifth respondents. Father of the deceased, sixth respondent died during the pendency of the appeal.

2. The tribunal found that he obtained licence and badge suppressing his age. Hence, his legal representatives are not entitled to compensation under section 166 of the Motor Vehicles Act. But, under section 140, Rs.50,000/- was awarded. Finding of negligence and quantum of compensation are disputed in this case. With regard to the question of negligence, the tribunal found as follows:

"..... Ext.A4 is the extract of admission register of Desaseva U.P. School, Kannadiparamba, produced to prove the date of birth of deceased Razak. It is seen as per Ext.A4 that the deceased was born on 20.2.1977, his date of birth being 20.2.1977. On 5.1.1995 when he received Ext.A2 driving licence, he had not completed 18 years. His date of birth as shown in Ext.A4, copy of driving licence is 16.1.1975. In the face of Ext.A4 that he was born on 20.2.1977, it appears that the deceased obtained the driving licence by misrepresentation and fraud by giving evidence that he was born on 16.1.1975. Section 4 of the M.V. Act strictly prohibits a person under the age of 18 to drive a motor vehicle in any public place. Sub-section (2) of section 4 of the M.V. Act says that no person under the age of 20 years shall drive a transport vehicle in any public place. Admittedly, the deceased was driving an Ambassador Tourist Taxi. As I have already stated, as on the date of issue of Ext.A2, driving licence, he had not completed 18 years. It is seen from Ext. A2 that he has obtained a metal badge on 2.3.1995, which is also in violation of Sub-section (2) of section 4 of the M.V. Act.

11. It is also relevant to notice in this connection that he obtained the licence on 5.2.1995 and the metal badge on 2.3.1995 and the incident took place on 27.4.1995 which shows that he met with the accident on the 56th day after obtaining the metal badge. His inexperience is also a fact that has contributed to the incident."

According to the claimants, he was born on 16.1.1975 and there are evidence like school register, but, no documents were produced to support his case. But, falsely declaring the age to get the certificate after passing proper test cannot be the sole cause of accident and it cannot be held that on that ground, he was alone negligent. Ext.A1 is the copy of F.I.R. It shows that negligence is alleged against the first respondent. It is true that PW1, first claimant, did not see the accident. But, first respondent was ex parte and the third respondent insurance company contested the case. No independent evidence was adduced to show the cause of accident. Accident occurred in the National Highway. It was a head-on collision. There is no independent evidence regarding the accident apart from F.I.R. which alleging negligence on the part of the first respondent. But, inexperience of the deceased also might have contributed the cause. It is a case of contributory negligence. In the absence of clear evidence as held by the Apex Court in Bijoy

Kumar Dugar v. Bidyadhar Dutta (AIR 2006 SC 1255), in the case of head-on collision, both drivers are responsible for the accident. If any one of the drivers was careful, the accident could have been averted. Therefore, both drivers are equally responsible for the accident. Since 50% of the accident was attributed to negligence of the deceased driver and 50% is due to the negligence of the first respondent driver, 50% of the compensation is liable to be paid by first respondent driver, second respondent owner and third respondent insurance company. Owner of the taxi and insurance company need not pay any contribution under section 166 of the Motor Vehicles Act as 50% of the accident was caused by contributory negligence of the deceased. As far as respondents 1 to 3 are concerned, deceased was a third party and they are liable to deposit 50% of the compensation as we have held that the driver of the lorry was also responsible for the accident and apportionment of negligence on him is 50%.

3. Now, the question is what is the amount of compensation payable. According to the claimant, deceased was getting a monthly income of Rs.3,600/- per month. It is contended that he was the sole bread winner of the family. Since his father neglected them and was living separate, he was looking after his

mother and younger brothers. He was aged only 20. There were future prospects in life also. Ext.A2 is his driving licence and badge to show that he had valid driving licence to drive the transport/commercial vehicle. In fact, he was driving a taxi car when the accident occurred. Since he was a driver, we are of the opinion that he would have been receiving Rs.100/- per day at the time of accident (27.4.1995) and he may be getting work for 25 to 26 days in a month. Hence, after deducting his personal expenses, he must be contributing Rs.1500/- to his family. Even though it was contended that deceased was aged 20 and Supreme Court in several cases held that when motor accident victims are aged 20 to 25, maximum multiplier shall be given, we are of the opinion that since he was not married, age of the claimants also to be looked into. His mother was aged 40. Brothers were minors. Taking guidance from the second schedule, we take 15 as the multiplier. Therefore, compensation will be $1500 \times 12 \times 15 = \text{Rs.}2,70,000/-$. He was taken to the Government Hospital, Kannur first from the place of accident. From there, by ambulance he was taken to the Medical College Hospital, Kozhikode and therefore his body was to be transported back to his native place. Therefore, for transportation expenses, we award Rs.3,000/-. For funeral expenses, Rs.2,000/-

can be awarded. For pain and suffering Rs.5,000/- can be awarded as death was not instantaneous, but, he died in the hospital. For loss of estate, an amount of Rs.5000/- can be awarded. For loss of love and affection to the mother Rs.5000/- can be granted. Thus, total amount of compensation will be Rs. 2,90,000/-. We have already found that there is 50% contributory negligence on the deceased. Hence, amount payable to the claimants is Rs.1,45,000/-. From the amount, compensation granted by the tribunal has to be deducted. Hence, additional compensation payable is Rs.95,000/-. The above Rs.95,000/- shall be deposited by the third respondent insurance company with 7.5% interest from the date of application till deposit. 12 years have passed after the accident. On deposit of the amount, 50% of the above shall be disbursed to the first appellant. Balance, in equal proportion shall be disbursed to appellants 2 to 4.

Appeal is allowed partly.

**J.B.KOSHY
JUDGE**

**K. HEMA
JUDGE**

vaa

**J.B. KOSHY AND
K.HEMA,JJ.**

M.F.A. No. 882 of 2002

Judgment

Dated:8th October, 2007